

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAII-AMERICAN WATER COMPANY)
For Approval of Rate Increases)
and Revised Rate Schedules and)
Rules.)
_____)

DOCKET NO. 2007-0180

ORDER NO. 24090

Filed March 13, 2008

At 2 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
INDUSTRY
STATE OF HAWAII

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii

Karen Higashi

In the Matter of the Application of)
HAWAII-AMERICAN WATER COMPANY)
For Approval of Rate Increases)
and Revised Rate Schedules and)
Rules.)

Order No. 24090

By this Order, the commission: 1) finds that the date of the completed Application for Approval of Rate Increases and Revised Rate Schedules and Rules, filed on October 29, 2007 ("Application") by HAWAII-AMERICAN WATER COMPANY ("HAWC"),¹ is December 11, 2007; 2) notifies HAWC that it will hold a second public hearing on HAWC's Application on April 14, 2008, at 7:00 p.m., at Hahaione Elementary School cafeteria; 3) grants the CITY AND COUNTY OF HONOLULU's ("City") Motion to Intervene, which was filed on January 17, 2008 ("City's Motion"); and 4) orders the parties to initiate the discovery process without delay and submit for the commission's review and consideration within fifteen (15) days from the date of this Order, a stipulated procedural schedule which complies with the time requirements of HRS § 269-16(d). If the parties are unable to agree to a stipulated procedural schedule, each party shall submit a

¹HAWC is a public utility as defined by Hawaii Revised Statutes ("HRS") § 269-1. It is authorized to provide wastewater collection, treatment and disposal service in the Hawaii Kai community on the island of Oahu, Hawaii.

proposed schedule for the commission's consideration by the same date.

I.

Background

On October 29, 2007, HAWC filed its Application requesting approval of a general rate increase of up to approximately \$1,324,488, or approximately 15.9 percent (15.9%), over total revenues at present rates for the calendar 2008 test year.

On November 19, 2007, the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate")² submitted its Statement of Position Regarding Completeness of Application stating:

[HAWC's Application] appears to have complied with the requirements of Subchapters 6 and 8 of the Rules of Practice and Procedure in Chapter 61 of the [c]ommission's HAR, since the application contains the items listed in the rules, with the exception of the incongruity of HAR § 6-61-87(6). This rule requires [HAWC] to provide earnings results for total utility operations and the division for which rate changes are sought. While HAWC provides the earnings for the six month period ending June 30, [2]007 for the total company operations and the division for which rate changes are sought, HAWC's application [] does not provide the total company financial information, separated by the various divisions, for 2006 or the 2008 test year at present and proposed rates The Consumer Advocate has discussed this omission with HAWC and has been informed by HAWC that the necessary information will be provided no later than Friday, November 30, 2007.

²The Consumer Advocate is an ex officio party to this docket pursuant to HRS § 269-51 and Hawaii Administrative Rule ("HAR") § 6-61-62.

Based on this commitment, and putting aside the appropriateness of the substance of the items provided, to the extent that compliance with the [c]ommission's Rules of Practice and Procedure in Chapter 61, Subchapters 6 and 8 is the standard, the Consumer Advocate will not object to the completeness of the application.

Consumer Advocate's Statement of Position Regarding Completeness of Application, filed on November 19, 2007, at 1-2.

On November 30, 2007, HAWC submitted to the commission a letter transmitting additional financial information for HAWC, separated by its various divisions (i.e., Hawaii Kai and Mauna Lani divisions) as well as information relating to its affiliate, American Water Enterprises, for 2006 and the 2008 test year. Portions had been redacted, pending the filing of a protective order.

On December 6, 2007, Protective Order No. 23876 was filed. Subsequently, on December 11, 2007, HAWC submitted to the commission a letter transmitting the redacted confidential financial information pursuant to Protective Order No. 23876.³

On December 17, 24, 31, 2007; and January 5, 2008, the commission published notice of the public hearing scheduled for January 7, 2008, in the Honolulu Star-Bulletin, The Maui News, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today.

On January 2, 2008, HAWC submitted to the commission a letter and attachments describing the steps it had taken in notifying its customers of the January 7, 2008 public hearing.

³On December 17, 2007, the Consumer Advocate submitted the protective agreements executed by its staff and on December 18, 2007, HAWC transmitted to the Consumer Advocate the confidential information pursuant to Protective Order No. 23876.

Specifically, HAWC stated that on December 14, 2007, a Customer Notice was mailed, via standard mail, to each of HAWC's customers and on December 14, 2007, a Notice of Public Hearing was published in the Honolulu Advertiser.

On January 7, 2008, a public hearing was held at Hahaione Elementary School cafeteria. Approximately 45 persons attended. Eleven persons presented oral testimony, including Lee Mansfield, manager of HAWC, and Catherine Awakuni, the Consumer Advocate.

Following the public hearing, the following written comments were received by the commission. On January 12, 2008, Lucien and Margaret Wong sent an email stating:

This is a formal complaint of an important PUC public meeting notification error. Yesterday Jan[uary] 11, 2008, we received in the mail the [HAWC] flyer dated Dec[ember] 14, 2007, notifying us of the Jan[uary] 7, 2008, [] public meeting. If the [] flyer was mailed on the same day it took twenty-nine (29) days to reach our home. Although [] this was during the busy holiday season that is absurd. Furthermore, the notice was received four (4) days after the meeting. Unfortunately there is no US Mail date stamp on the flyer which is also true for other prepaid presorted standard mail.

We did attend the Jan[uary] 7, 200[8] meeting because a neighbor informed us by email. However, one can only wonder how many others were not made aware because they did not receive flyers in sufficient time. We recall others testifying at the Jan[uary] 7 meeting that they had received the notice only days before the meeting, and there is no way of knowing how many did not attend, but would have, simply because they did not receive the notice. One person even testified that a public meeting a few years back for an earlier rate increase was schedule on July 3 when many residents were away for the July 4 holidays implying there is apparently a pattern of HAWC attempting to minimize public attendance at these types of hearings.

Email from Lucien Wong to the commission, dated January 12, 2008. Another HAWC customer, Jordan Pinsker, stated, "[w]e also just received notification of the HAWC rate increase and meeting today (1/12/08) in the mail, with a letter that has no postmark on it, with the same dates mentioned below. I believe this is technically illegal to send such a late notification, especially about a proposal for a rate increase."⁴ Another person emailed the commission on January 12, 2008, stating, "[o]ur experience is the same[.] Notice dated 12/14/07 received 01/11/08 for a hearing on 01/07/08. Unacceptable. This hearing should be declared invalid unless the proposed rates were denied."⁵

By letter dated January 31, 2008, City and County of Honolulu Councilmember Charles Djou notified the commission that he had received emails from his constituents regarding HAWC's notice:

It seems that the letter dated December 14, 2007, detailing the [rate] increase was received by some [of] my constituents on January 11, 2008, four days after the public hearing. The lateness of the letter prevented these residents from attending the public hearing on the rate increase. I respectfully request that the [commission] review this incident. I believe the [commission] should consider scheduling another public hearing on this matter to afford those who missed the first public hearing an opportunity to voice their opinion.⁶

⁴Email from Jordan Pinsker to the commission, dated January 12, 2008.

⁵Email from "Kkekoa" to the commission, dated January 12, 2008.

⁶Letter from Councilmember Charles Djou to the commission, dated January 31, 2008.

On February 4, 2008, Christopher Dunn emailed the commission stating, "My recent bill from [HAWC] included a notice about a hearing or meeting on this matter. However, the notices [sic] were received AFTER the meeting date! This seems to be a clear case of a meeting[] that was not properly noticed. I hope you can look into this matter and do whatever is in your capacity to (a) provide a properly noticed meeting and (b) keep rates from increasing."⁷

On January 29, 2008, the commission requested that HAWC and the Consumer Advocate address whether HAWC fulfilled its obligations under HRS § 269-12(c). On February 8, 2008, HAWC responded, stating that:

. . . although HRS § 269-12(c) is silent as to the specific notification method(s) or manner(s) required, it is HAWC's understanding that the various notification methods or manners [HAWC employed] in this general rate case proceeding, are above and beyond the notification methods or manners utilized by other similar private water and wastewater utilities for their respective general rate case proceedings.

HAWC's Response Statement to the Hawaii Public Utilities Commission's Letter Dated January 29, 2008 ("HAWC's Response"), at 5.

On February 11, 2008, the Consumer Advocate submitted its response to the commission's January 29, 2008 letter stating that HRS § 269-12(c) does not provide guidance as to the method of notice and "HAWC's failure to provide timely received notices to its customers via mail was unfortunate and constituted a greatly

⁷Email from Christopher Dunn to the commission, dated February 4, 2008.

missed opportunity to effectively communicate with its customers. However, given that the statute does not specifically require customer notices via U.S. mail and since HAWC timely published a notice of its rate increase and the public hearing in a newspaper of general circulation, HAWC did not violate State law."⁸

II.

Discussion

A.

Completeness of Application

HAWC is a public utility with annual gross operating revenues of over \$2 million. As such, HAWC filed its Application under HRS § 269-16 and HAR § 6-61-87 (Requirements for General Rate Increase Applications by a Public Utility with Annual Gross Operating Revenues of \$2,000,000 or more). HRS § 269-16(d) provides in relevant part:

.

The nine-month period in this subsection shall begin only after a completed application has been filed with the commission and a copy served on the [C]onsumer [A]dvocate. The commission shall establish standards concerning the data required to be set forth in the application in order for it to be deemed a completed application. The [C]onsumer [A]dvocate may, within twenty-one days after receipt, object to the sufficiency of any application, and the commission shall hear and determine any objection within twenty-one days after it is filed. If the commission finds that the objections are without merit, the application shall be deemed to have been completed upon original filing. If the commission finds the application to be incomplete, it shall require the

⁸Letter from Consumer Advocate to the commission, dated February 11, 2008, at 2.

applicant to submit an amended application consistent with its findings, and the nine-month period shall not commence until the amended application is filed.

HRS § 269-16(d).

HAR § 6-61-87 states:

Requirements for general rate increase applications by a public utility with annual gross operating revenues of \$2,000,000 or more. For an application by a public utility with annual gross revenues from its public utility business of \$2,000,000 or more for a general rate increase or to alter any classification, contract, practice, or rule as to result in a general rate increase to be considered a completed application under section 269-16, HRS, in addition to meeting the requirements in section 6-61-86, must contain the following:

.....

(6) If an applicant has more than one division or county to serve in the State, the earnings results for the total utility operations as well as for the particular division or county for which rate changes are sought. If an applicant cannot comply with this rule, it shall state the reasons why it cannot comply

.....

HAR § 6-61-87.

HAWC's Application failed to comply with the requirements of Subchapters 6 and 8 of the Rules of Practice and Procedure in Chapter 61 of the HAR; specifically, HAR § 6-61-87(6). HAWC did not provide the total company financial information, separated by its various divisions for 2006 and the 2008 test year, until December 11, 2007.

Upon review, the commission finds that with the additional information, HAWC's Application is complete and properly filed under HRS § 269-16 and HAR § 6-61-87.

Accordingly, the filing date of HAWC's completed Application is December 11, 2007.

B.

Public Hearing

Regarding the requirements for notice of public hearings in rate increase applications, HRS § 269-12(c) states:

Any public hearing held pursuant to section 269-16(c), shall be a noticed public hearing or hearings on the island on which the utility is situated. Notice of the hearing, with the purpose thereof and the date, time, and place at which it will open, shall be given not less than once in each of three weeks statewide, the first notice being not less than twenty-one days before the public hearing and the last notice being not more than two days before the scheduled hearing. The applicant or applicants shall notify their customers or patrons of the proposed change in rates and of the time and place of the public hearing not less than one week before the date set, the manner and the fact of notification to be reported to the commission before the date of hearing.

HRS § 269-12(c) (emphasis added).

HAWC states that it informed its customers of the public hearing through a Customer Notice that was mailed on December 14, 2007, by standard mail to each of its customers and through a Notice of Public Hearing published in the Honolulu Advertiser on December 14, 2007.⁹ However, despite HAWC's efforts a significant number of customers failed to receive timely notice of the public hearing from HAWC.

⁹Letter from HAWC to the commission, dated January 2, 2008 and attachments.

While the commission agrees that HRS § 269-12(c) does not specify any particular method of notice, given the large number of people who apparently failed to receive notice of the public hearing from HAWC, and since participation is a vital part of the rate-setting process, the commission orders a second public hearing regarding HAWC's Application.¹⁰ In doing so, the commission agrees that in typical circumstances it may be reasonable to rely on standard mail for providing notice to ratepayers. However, in these circumstances, sending notice via standard mail during the holiday season, when the US Postal Service is busiest, was not a prudent way to ensure ratepayers receive notice in a timely manner. That HAWC also published notice of the public hearing, in the commission's view, was not sufficient to satisfy the requirement of HRS § 269-12(c) that the utility provide notice to its customers.

A second public hearing regarding this matter will be held on April 14, 2008, at 7:00 p.m. in the Hahaione Elementary School cafeteria. HAWC is directed to provide notice to its customers of this hearing pursuant to HRS § 269-12(c). The commission will publish notice in the same five newspapers pursuant to HRS § 269-12(c).

¹⁰This action is limited to the facts of this particular situation and should not be construed as precedent or applied in other proceedings.

C.

City's Motion to Intervene

HAR § 6-61-55 sets forth the requirements for intervention in commission proceedings. It states, in relevant part:

- (a) A person may make an application to intervene and become a party by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57, stating the facts and reasons for the proposed intervention and the position and interest of the applicant.
- (b) The motion shall make reference to:
 - (1) The nature of the applicant's statutory or other right to participate in the hearing;
 - (2) The nature and extent of the applicant's property, financial, and other interest in the pending matter;
 - (3) The effect of the pending order as to the applicant's interest;
 - (4) The other means available whereby the applicant's interest may be protected;
 - (5) The extent to which the applicant's interest will not be represented by existing parties;
 - (6) The extent to which the applicant's participation can assist in the development of a sound record;
 - (7) The extent to which the applicant's participation will broaden the issues or delay the proceeding;
 - (8) The extent to which the applicant's interest in the proceeding differs from that of the general public; and
 - (9) Whether the applicant's position is in support of or in opposition to the relief sought.

HAR § 6-61-55(a) and (b). HAR § 6-61-55(d) further states that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented."¹¹

The City states that it "is the single largest customer of HAWC and fees are paid to HAWC pursuant to [a 1961 agreement between the Trustees Under the Will and of the Estate of Bernice P. Bishop, deceased, Kaiser Hawaii Kai Development Co., and the City ("1961 Agreement")]."¹² The City claims that in 2004, it paid \$439,524 of HAWC's \$6,894,393 total revenue; in 2005, it paid \$419,531 of HAWC's \$7,261,979 total revenue; in 2006, it paid \$492,396 of HAWC's \$7,693,071 total revenue.¹³

Also, the City disputes its obligation to pay HAWC for its parks and other facilities. It is the City's position:

that the 1961 Agreement remains valid and HAWC may not alter the provisions of the 1961 Agreement by increasing the rates paid by the City for sewerage services to residents in the Portlock, Kuliouou Valley, Paiko and other areas in Hawaii Kai that are directly served by the City sewer system connected to HAWC's system and who pay their sewer bills directly to the City instead of HAWC. It is also the City's position that because the 1961 Agreement remains valid, HAWC may not seek to institute charges for sewerage services to City parks and other facilities through its rate application. . . .

¹¹See In re Application of Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (Haw. 1975) (intervention "is not a matter of right but a matter resting within the sound discretion of the commission").

¹²City's Motion, at 6.

¹³City's Motion, at 6.

City's Motion, at 5. Therefore, there is an existing disagreement involving HAWC and the City regarding the rates which HAWC may assess. "The effect of a [commission] decision and order granting HAWC's rate application could also mean significant charges in sewer fees for City parks and other facilities per year previously unassessed [sic] against the City."¹⁴ The City maintains that its interests are significant and distinct from other rate payers due to the 1961 Agreement and its interests cannot be represented by the Consumer Advocate or HAWC.¹⁵ Finally, the City asserts that it will not broaden the issues or delay the proceeding.¹⁶

Based upon the foregoing, the commission finds that the City has a substantial interest that is reasonably pertinent to the matters of this docket, and that its participation in this proceeding may assist in the development of a sound record. Accordingly, the commission concludes that the City's Motion should be granted.

D.

Stipulated Procedural Order

The commission interprets HRS § 269-16(d) to require the commission to issue a procedural order that allows the commission to complete its review within the nine-month period prescribed in HRS § 269-16(d). Given the nine-month deadline governing the commission's issuance of its Decision and Order,

¹⁴City's Motion, at 6.

¹⁵City's Motion, at 7.

¹⁶City's Motion, at 7.

the parties shall: (1) initiate the discovery process forthwith; and (2) submit, for the commission's approval, a stipulated procedural schedule setting forth the issues, procedural schedule, and procedures to govern HAWC's Application, within fifteen (15) days from the date of this Order.¹⁷ The stipulated procedural schedule to be submitted by the parties shall comply with the time requirements of HRS § 269-16(d). If the parties are unable to agree to a procedural schedule, as prescribed, then each party shall submit a proposed schedule for the commission's consideration by the same date.

III.

Orders

THE COMMISSION ORDERS:

1. The date of HAWC's completed Application, is December 11, 2007.
2. The commission will hold a second public hearing on HAWC's Application on Monday, April 14, 2008, at 7:00 p.m., at Hahaione Elementary School's cafeteria. HAWC is directed to comply with the notice requirements of HRS § 269-12(c).
3. The City and County of Honolulu's Motion to Intervene is granted.
4. The parties shall initiate the discovery process without delay; and submit, for the commission's review and consideration, within fifteen (15) days from the date of this

¹⁷If intervenor or participant status is later granted to any interested person, the commission, in its discretion, may amend any stipulated procedural schedule approved by the commission, if necessary.

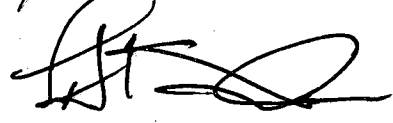
Order, a stipulated procedural schedule which complies with the time requirements of HRS § 269-16(d). If the parties are unable to agree to a stipulated procedural schedule, each party shall submit a proposed schedule for the commission's consideration by the same date.

DONE at Honolulu, Hawaii MAR 13 2008.

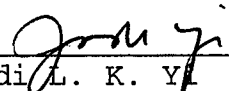
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Jodi L. K. Yi
Commission Counsel

2007-0180.cp

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 24090 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: MAR 13 2008